



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Valley Regional Office

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Robert G. Burnley
Director

R. Bradley Chewning, P.E.
Valley Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION

ORDER BY CONSENT
ISSUED TO

Floors Unlimited, Inc.

SECTION A: Purpose

This is a Consent Order issued under the authority of Sections 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and Floors Unlimited, Inc. to resolve certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Order" means this document, termed a Consent Order under the authority of the Virginia Waste Management Act.
3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of the Commonwealth of Virginia described in Va. Code § 10.1-1401 and § 10.1-1184.
4. "Floors Unlimited" means Floors Unlimited, Inc., a construction general contracting company based in Stanardsville, Greene County, Virginia.
5. "Site" means the open burn site, a parcel of real property located near Floors Unlimited's office at 1027 Evergreen Church Road in Stanardsville, Greene County.

6. "DEQ" means the Virginia Department of Environmental Quality, an independent administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
7. "VRO" means DEQ's Valley Regional Office.
8. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
9. "VSWMR" means the Waste Board's Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
10. "Regulations" means Va. Code §10.1-1408.1.A of the Virginia Waste Management Act (VWMA) and Virginia Administrative Code (VAC) section 9 VAC 20-80-90.A.1 of the VSWMR.

SECTION C: Findings of Facts and Conclusions of Law

1. On July 12, 2004 DEQ inspectors responded to a citizen's complaint regarding emissions of smoke from the Site located along State Route 615, also named Evergreen Church Road, in Greene County. DEQ inspectors observed an open burning event in progress at the Site. DEQ inspectors observed four individuals operating from two vans marked with Floors Unlimited identification and setting fire to refuse.
2. The DEQ inspectors informed the individuals who were operating out of the Floors Unlimited vehicles that the unpermitted burning of construction waste materials was contrary to state air and waste law and regulations. The fire burned itself out before fire department officials needed to be called. The unidentified individuals were informed that Floors Unlimited would receive Notices of Violation from DEQ.
3. The refuse and materials being burned included wood and building materials, an air conditioner, stereo speakers, plastic wrappings, aerosol cans, and carpet in apparent violation of Va. Code §10.1-1408.1.A of the VWMA and Virginia Administrative Code 9 VAC 20-80-90.A.1 of the VSWMR.
4. The construction waste materials, carpet, plastic wrappings, etc., found burning at the Site, constitute "solid waste" as that term is defined by Va. Code §10.1-1400.
5. Va. Code §10.1-1408.1.A provides that: "No person shall operate any sanitary landfill or other

facility for the disposal, treatment, or storage of nonhazardous solid waste without a permit from the Director.”

6. 9 VAC 20-80-90.A.1 provides that: “No person shall own, operate, or allow to be operated on his property any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste in a manner that constitutes open dumping as provided for in Part IV of this Chapter.”
7. In addition, pursuant to 9 VAC 20-180-80.B.7, the Site constitutes an open dump since Floors Unlimited engaged in the open burning of solid waste as defined in Va. Code § 10.1-1400.
8. No permit was issued to Floors Unlimited by DEQ for the disposal, treatment, or storage of solid waste, including the burning of solid waste, at the Site.
9. On August 5, 2004, DEQ issued a Notice of Violation (NOV) to Floors Unlimited for the waste management violations. The NOV described the apparent violations relating to Floors Unlimited’s failure to obtain a permit to dispose waste and allowing its property to be used to dispose waste.
10. On October 26, 2004, DEQ representatives met with Bill Layton, the owner of Floors Unlimited, to discuss the circumstances involving the unlawful disposal and burning of waste. Mr. Layton admitted that he was responsible for the unpermitted burning of the waste at the Site, including construction waste from his Floors Unlimited flooring business.
11. Mr. Layton, on behalf of Floors Unlimited, agreed to enter into an Order, this document, and pay civil charges for violations of the VWMA.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders Floors Unlimited, and Floors Unlimited voluntarily agrees:

1. To pay a civil charge of **\$1,190.00** within 30 days of the effective date of this Order in settlement of the apparent violations cited in this Order. The effective date of this Order shall be the date the Order is signed by the Director, after required notice and approval by the Board. Payment shall be made by check payable to the “Treasurer of Virginia,” delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. And to provide documentation to DEQ within 30 days of the effective date of this Order that the open burning Site has been cleaned up and any remaining waste materials have been properly disposed of.

The payment shall include Floors Unlimited's Federal ID number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

SECTION E: Administrative Provisions

1. This Order only addresses and resolves those apparent violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
2. For purposes of this Order and subsequent actions with respect to this Order, Floors Unlimited admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
3. Floors Unlimited declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any and all other facts and conclusions of law, including any action taken by the Board to enforce this Order.
4. Failure by Floors Unlimited to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
5. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
6. Floors Unlimited shall be responsible for failure to comply with any of the terms and conditions of

this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Floors Unlimited shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Floors Unlimited shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 72 hours of learning of any condition above, which Floors Unlimited intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

7. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
8. This Order shall become effective upon execution by both the Director or his designee and Floors Unlimited. Notwithstanding the foregoing, Floors Unlimited agrees to be bound by any compliance date which precedes the effective date of this Order.
9. This Order shall continue in effect until:
 - a. Floors Unlimited petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order. The Director's determination that Floors Unlimited has satisfied all the Requirements of the Order is a case decision within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board terminates this Order in his or its own discretion upon 30 days' written notice to Floors Unlimited.
10. By its signature below, Floors Unlimited voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3 day of March, 2005.

R. Bradley Channing
Robert G. Burdley, Director
Department of Environmental Quality

Floors Unlimited voluntarily agrees to the issuance of this Order.

By: *Bill Layton*

Date: 1-1-05

Commonwealth of Virginia

City/County of Greene

The foregoing document was signed and acknowledged before me this 1st day of
January, 2005, by Bill Layton, who is
(name)

owner of Floors Unlimited on behalf of Floors Unlimited.
(title)

Shubrajan A. Allen
Notary Public

My commission expires: 10-31-2007

